

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ZION LITTLEJOHN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHIKELA S. DIXON,

Respondent-Appellant.

UNPUBLISHED

August 17, 2004

No. 249012

Wayne Circuit Court

Family Division

LC No. 96-344870

Before: Neff, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Respondent Shikela S. Dixon appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i) and (b)(ii), (c)(i),¹ (g), (i), and (j). We affirm.

I. Facts and Procedure

On April 13, 1999, respondent's son, Zion, was born prematurely with serious lung problems. Because of his condition, nursing services were provided after his birth, but had stopped by March 2000 because of improvements to Zion's health. On September 8, 2000, petitioner filed a petition for temporary wardship of Zion. The petition alleged that respondent had not been taking her medication for chronic mental illness, had missed health appointments, and was improperly adjusting Zion's oxygen monitor.

¹ All parties concede that termination under MCLA 712A.19b(3)(c)(i) is improper. Here, the proceeding was on an original permanent custody petition, and termination is not authorized under subsection (c)(i) at the initial disposition in the absence of prior adjudication. MCR 3.977(E) expressly excludes subsection (c)(i) as a ground for termination in such a case. Thus, termination was not authorized under subsection (c)(i). The error is harmless, however, if other grounds existed for termination. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent believed that Zion's nursing services should not have been stopped because Zion had experienced seizures. Based on her claim, a neurologist prescribed medication for Zion. Also, because respondent did not believe Zion was accepting his medication or food, doctors surgically installed a feeding tube.

Nursing services resumed in July 2000. Afterwards, medical personnel, including nurses that cared for Zion twenty to forty hours per week, observed no seizures. After the insertion of the feeding tube, Zion always seemed hungry. On September 27, 2000, the petition was amended to seek termination of respondent's parental rights.²

On August 1, 2001, the termination trial began. There was testimony that respondent fabricated Zion's symptoms. Dr. Gary Trock doubted whether Zion had seizures and said he did not appear to need a feeding tube. Dr. Trock noted that no hospital personnel observed Zion having seizures, and that a doctor primarily relies on the parent's word to diagnose such seizures. Dr. Ehud Kapen also suspected respondent fabricated Zion's symptoms. Dr. Kapen stated that there were no problems with Zion's weight gain before or after the feeding tube surgery. Meanwhile, when Zion was placed with his father, Eric Littlejohn, he gained weight and ate well. Littlejohn did not observe seizures while Zion was in his care. Dr. Trock said it was very uncommon for seizures to persist while using medication, as respondent claimed, and then to be seizure free a year later without medication, as Littlejohn claimed.

Clinical psychologist Dr. Stephen Fabick diagnosed respondent with factitious disorder with predominantly psychological signs and symptoms and major depressive disorder, severe with psychotic features.³ Both disorders severely impaired respondent's ability to parent Zion, and respondent's prognosis for improvement was very low. Dr. Fabick also raised the possibility that respondent had Munchausen syndrome by proxy.⁴ Records revealed that respondent's hospitalizations for various medical problems consistently came back saying nothing was wrong.

There was also testimony that respondent acted irresponsibly as a parent. She drove with Zion sitting in the back with no car seat or seat belt, and left him with a bottle propped on him rather than feeding him herself. Respondent struggled financially, regularly receiving "shutoff

² On March 30, 2000, respondent's former husband and Zion's father, Eric Littlejohn, initiated a custody action in Wayne County. When apprised of this, the Oakland County court transferred the neglect action to Wayne County for consolidation with the custody matter. A Wayne County permanent custody petition was filed on December 11, 2000 with allegations essentially identical to those in the Oakland County petition. On June 6, 2001, the court separated the custody and termination cases, with the custody hearing to follow the disposition of the termination trial.

³ A factitious disorder with predominantly psychological signs and symptoms is characterized by the intentional production or feigning of psychological symptoms that are suggestive of a mental disorder. American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders*, 472 (4th ed 1994) (DSM-IV).

⁴ Munchausen syndrome by proxy, a type of factitious disorder, is a mental illness in which a person acts as if a person he is caring for has a physical or mental illness when the person is not actually ill. DSM-IV at 725-726.

notices” from utility companies, lying about her marital status and employment to get greater financial aide, and failing to maintain steady employment or income. Additionally, respondent failed to comply with the parent/agency agreement. The agreement required a psychological evaluation, parenting classes, counseling, physical and financial plans for housing, employment, daycare, and doctor’s visits, signing necessary releases, attending all hearings, and regular visits with Zion. Respondent had only complied with the visitation requirement.

The trial court found that respondent fabricated Zion’s symptoms and acted irresponsibly as a parent. The trial court also found that respondent’s parental rights to her son Anthony Hudson were terminated on May 4, 1999, approximately three weeks after Zion’s birth. On September 8, 2002, the court terminated respondent’s parental rights to Zion.

II. Analysis

A. Standard of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999). Once a ground for termination is established, the court must order termination unless there is clear evidence, on the whole record, that termination is not in the child’s best interest. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court’s decision is reviewed for clear error. *In re IEM*, *supra* at 451. A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). Even if termination is erroneous under one statutory ground, the error can be harmless if the court properly found another statutory ground for termination. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

B. Discussion

Respondent argues that the trial court clearly erred in finding that there was clear and convincing evidence to terminate her parental rights. We disagree. MCLA 712A.19b(3) states that the court may terminate parental rights to a child if they find, by clear and convincing evidence, 1 or more of the following:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Here, the trial court did not clearly err in finding the above statutory grounds established based on respondent's fabrication of Zion's symptoms, which resulted in Zion unnecessarily undergoing surgery and taking medication. There is evidence that respondent suffered from a factitious disorder. No one other than respondent observed Zion having seizures. On the other hand, it was not clear that Zion had difficulty taking medicine or that he required surgery. Since respondent's statements to health care providers subjected Zion to unnecessary medical intervention, Zion suffered preventable injury. Based on respondent's irresponsibility and mental health, it is unlikely she will be able to provide proper care and custody for Zion, and he would likely suffer injury if placed with her. Moreover, by engaging in objectionable parental behavior and failing to comply with the parent/agency agreement, respondent acted irresponsibly in caring for Zion. Thus, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(b)(i) and (b)(ii), (g), and (j).⁵

Respondent also contends that the trial court erred in holding that termination of parental rights was not clearly contrary to the child's best interests. We disagree. MCL 712A.19b(5) provides that the court "shall" terminate parental rights if one statutory ground for termination is found, "unless" termination is clearly not in the child's best interests. *In re Trejo, supra* at 350. The trial court correctly found that termination was not clearly contrary to Zion's best interests.

⁵ The trial court also did not err in terminating respondent's parental rights under MCL 712A.19b(3)(i). MCL 712A.19b(3)(i) states, "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." Here, the court had already terminated respondent's parental rights to Anthony Hudson due to chronic neglect. Specifically, respondent failed to give Anthony, who was developmentally delayed, his medication and comply with a specialized treatment plan for parents of medically fragile children. In spite of efforts to help respondent, particularly the parent/agency agreement, respondent failed to rehabilitate. Thus, termination was proper under MCL 712A.19b(3)(i).

Though respondent and Zion are apparently bonded, respondent's history of irresponsibility and mental illness casts doubt on her abilities to be responsible and act in Zion's best interests. Thus, we are not left with a firm conviction that the trial court made a mistake.

Affirmed.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Brian K. Zahra